



Scottish  
Forestry  
Coilltearachd  
na h-Alba

Saughton House  
Broomhouse Drive  
Edinburgh, EH11 3XD  
forestry.gov.scot

Email: [scottish.forestry@forestry.gov.scot](mailto:scottish.forestry@forestry.gov.scot)  
Tel: 0131 370 5250

Chief Executive: Paul Lowe

Fiona Baker  
Rhu and Shandon Community Council  
Inverallt  
Shandon  
Helensburgh  
G84 8NR

[secretary@rhuandshandoncommunity.org](mailto:secretary@rhuandshandoncommunity.org)

Our ref: 2024/00413478

29 May 2024

Dear Ms Baker

## **COMPLAINT REGARDING TORR FARM WEST MANAGEMENT PLAN (MPL330218)**

Thank you for your e-mail of 30<sup>th</sup> April 2024 which we have dealt with as a Stage 2 complaint as per [our published guidance on the Scottish Forestry website](#).

As is normal practice for a stage 2 complaint, this review has been conducted by someone not directly involved with the case in question. As the Delivery and Improvement Conservator, I have been asked to investigate your complaint and respond.

There are a number of issues raised in the complaint, I have tried to summarise the key elements below. I understand your complaint to be about :-

- *Scottish Forestry's decision not to report the landowner to the Procurator Fiscal (PF) in 2021 following the unauthorised felling that the landowner carried out within their woodland*
- *Scottish Forestry's decision not to issue a "restocking order" (referred to in legislation as restocking direction) on the landowner*
- *that neither the landowner or Scottish Forestry gave the community an opportunity to consult on further drafts of the management plan prior to approval. The Community council had felt that this was a commitment made at the site meeting on 10<sup>th</sup> June 2022.*

You also asked a question in the letter:

*Has felling permission been approved for further works within the woodland?*

Scottish Forestry is the Scottish Government agency responsible for forestry policy, support and regulation

Is e Coilltearachd na h-Alba a' bhuidheann-ghnìomha aig Riaghaltas na h-Alba a tha an urra ri poileasaidh, taic agus riaghladh do choilltearachd

 **Scottish Government**  
Riaghaltas na h-Alba

You asked that:

*Scottish Forestry to revoke the woodland management plan pending further engagement.*

I have undertaken a review of the case documentation associated with this management plan including the previous communications between the Community Council, the landowner and Scottish Forestry (SF).

I can confirm that SF have not issued a felling permission for this woodland nor has the landowner requested to carry out additional felling. As outlined in the management plan, they intend to do very small scale works below the thresholds requiring consent.

The next point relates to your concern that *Scottish Forestry's decision not to report the landowner to the Procurator Fiscal in 2021*. SF have previously responded to a stage 2 complaint raising this specific concern and so I am drawing from that response.

Scottish Forestry follow the same process as all other non-police agencies that report cases to the Procurator Fiscal, which is as follows:-

Scottish Forestry staff undertake an investigation and gather evidence in order to demonstrate that either the felling has permission, is exempt from requiring felling permission, or that the offence of unauthorised felling may have been committed.

If we have evidence that an offence has been committed, the case is passed to senior staff to decide on the appropriate response, which can include:

- closing the case due a lack of evidence
- issuing a warning
- entering into a voluntary agreement to re-forest the felled or an alternative area
- issuing a Restocking Direction
- pursuing prosecution.

The Forestry and Land Management (Scotland) Act 2018 allows us to issue a Restocking Direction without requiring a successful prosecution, as long as we can obtain sufficient evidence that the felling wasn't exempt or authorised. This is an expedient measure, enabling felled sites to be re-forested quickly.

If an owner is willing to enter into a voluntary agreement with us, then this can be an acceptable solution as the land-owner is willing rather than being forced to take a specific action against their wishes.

Voluntary agreements are checked for compliance and, should the owner fail to meet the requirements of the agreement, we can take enforcement action. As a result, both of these options (issuing a Restocking Direction or entering into a voluntary agreement) can be more appropriate than prosecution.

In the case of Torr Farm, SF decided not to seek prosecution. The relevant factors which in reaching this decision were:

- The landowner was unaware of the felling regulations and was cooperative with the investigation.
- The landowner had committed to bring the woodland into active management through the preparation of a management plan.
- There was already very good regrowth from the stumps without the need for additional protection. Given this is a wet woodland and the coppice regrowth is predominantly alder, which is not that palatable to herbivores, then this was considered low risk.

Moving onto your next point, *Scottish Forestry's decision not to issue a "restocking order"* SF did not feel that it was necessary to issue a restocking direction on the landowner at the time because there was already substantial coppice regrowth from the stumps and the landowner was in agreement to allow them to regrow. Scottish Forestry will intermittently visit the site to check progress. SF can still use regulatory action, at a later date, in the event that the woodland is not regenerating sufficiently in the future.

With regards to your concern that *neither the landowner or Scottish Forestry gave the community an opportunity to consult on further drafts of the management plan prior to approval*. In the review of the documentation, I noted from the minute of the site visit meeting on 10<sup>th</sup> June 2022, completed by Mike Strachan, that he referenced on 2 occasions that the landowner and SF had agreed to have further engagement with the community on this plan. I understand that this note was shared with the Community Council at the time. In addition, whilst conducting this review I also spoke to Mike Stachan to confirm that he was fully aware of this commitment which he confirmed. I concluded, therefore, that it is entirely reasonable for yourselves, the Community Council to have expected further engagement prior to approval of the management plan.

In the early draft of the plan that the community council responded to in 2022, it contained a proposal for some quite intensive thinning of the woodland and this was one of several concerns raised by the community. I note that the landowner removed this element from the management plan. Control of invasive species was also raised and is also covered in the updated management plan. I also noted that in the updated management plan the landowner was not intending to do any operations that require formal consent from SF, i.e. any work proposed was below the threshold that would have required a felling permission.

That being the case, had the previous felling not take place, the landowner could have decided not to complete a management plan. However, given the previous issues, SF pushed for the management plan to be prepared as part of the actions following the unauthorised felling works in 2021. The consultation arrangements for a small scale woodland management plan should be proportionate to the nature of the works proposed and sensitivity of the woodland. In normal circumstances an operation of this type and scale

which does not propose any works requiring consent would not normally require formal consultation or the need for this to be on the public register.

I also note that SF had a change of case officer between 2021 and 2024 on the Torr farm case. The commitment to further engagement does not appear to have been sufficiently emphasised during handover.

In summary therefore, I find that your complaint should be partially upheld.

Scottish Forestry and the landowner gave a verbal commitment at the site meeting on 10<sup>th</sup> June 2022 for further engagement with the community on the draft plan and this was included within the minute taken from that site visit. Therefore, SF should have honoured the commitment that was given at the site meeting on 10<sup>th</sup> June 2022.

I therefore can only offer an apology that this further engagement did not take place. Given that the management plan does not contain works requiring consent, revoking approval would not be proportionate in this case. SF would however welcome any comments that you have on the updated management plan and we would share those with the landowner for their consideration.

On the other 2 points, I do not uphold the complaint as I found that the correct and proportionate action was taken to address the issue of unauthorised felling in 2021 and given that the site is regenerating naturally, the issue of a restocking direction is unnecessary at this stage.

I hope that I have provided a response to the areas of concern.

## **Right of appeal**

Normally we would advise complainants that if they remain dissatisfied with our response, they can submit a complaint to the Scottish Public Services Ombudsman. However, I note that the Ombudsman has stated he is not able to accept complaints from community councils on their own behalf. If you do wish to explore this option, you can contact the Ombudsman at:

Scottish Public Services Ombudsman  
4 Melville Street  
Edinburgh  
EH3 7NS

Telephone: 0800 377 7330

Email: [ask@spsso.org.uk](mailto:ask@spsso.org.uk)

Website: [www.spsso.org.uk](http://www.spsso.org.uk)

Yours sincerely



Neil Murray  
Delivery and Improvement Conservator.  
Scottish Forestry